No. 80962

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN DIEGO,
Petitioner,

v.

GERALD J. LONERGAN, Auditor and Controller of the County of San Diego,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

BRIEF OF RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Does Article IV, Section 4 of the United States Constitution bar the California Supreme Court from determining the interpretation and interrelationship of property tax provisions of the California Constitution as they relate to the ministerial duties of County officers.

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BRIEF OF RESPONDENT IN OPPOSITION

JURISDICTION

The jurisdiction of this Court is invoked by petitioner under 28 U.S.C. Section 1257(3).

Respondent challenges both the existence of a federal right in issue and the timely raising thereof as more fully set forth in the Argument below.

STATEMENT OF THE CASE

There were no factual issues in dispute in this case below. The action sought only to determine the nature and extent of the ministerial mandatory duties of the Auditor and Tax Collector with regard to computing, billing and collecting the unsecured property taxes for the 1978-79 tax year.

Taxable property in California is first divided between real property and personal property. All taxable property, whether real or personal, appears on the assessment roll. In preparing the assessment roll, the assessor classifies properties as either secured or unsecured. The secured portion of the assessment roll is that part of the roll containing property the taxes on which are a lien on the property sufficient in the opinion of the assessor to secure payment for the taxes and all other property is placed on the unsecured roll. Taxes on the unsecured roll are due on lien date, March 1, prior to commencement of the tax year and become delinquent normally on August 31. Unsecured taxes are frequently billed as soon as possible after the lien date and in almost all instances are billed prior to the adoption of the secured tax rates by various local government agencies on or before September 1. Therefore, the tax rate which is applied to property on the unsecured roll has historically been the secured tax rate from the prior year's secured roll. The use of the prior year's secured rate for the current year's unsecured roll is required by Article XIII, Section 12(a), of the California Constitution, and implementing legislation.

On June 6, 1978, Proposition 13 was adopted which added a new Article XIII A to the California Constitution, providing value limitations for real property and a maximum tax rate for such real property. Questions then arose as to the impact of

Article XIII A upon the historical practice of applying the prior year's secured tax rate to the unsecured roll. This controversy came about because the unsecured roll, while consisting primarily of personal property, also included various types of real property which were not deemed sufficient security for taxes so as to be placed on the secured roll.

The Auditor and Tax Collector announced their intent to comply with Article XIII, Section 12(a) of the Constitution by applying the prior year's secured rate to the unsecured roll for the 1978-79 tax year. The Board of Supervisors made a policy determination that the same or similar rates as applied to the secured roll should be applied to the unsecured roll for the 1978-79 tax year. Thus, the controversy was drawn.

The 58 counties throughout the state significantly split on this issue with 22 counties, including most of the larger counties following the mandate of Article XIII, Section 12(a) and the initial position of the State Attorney General as set forth in his official analysis of Proposition 13, issued on April 27, 1978.

After the election the State Attorney General reversed his position and filed an action in the California Supreme Court challenging the acts of the auditors and tax collectors in the 22 counties which had applied the prior year's secured tax rate to unsecured property for 1978, or indicated their intent to do so. (*Younger* v. *Alvord* [1978] Supreme Court No. LA 30996.) On August 16, 1978, the State Supreme Court denied the petition without comment. Thereafter, this action was commenced by the Board of Supervisors.

In most, though not all circumstances, the application of the 1977 secured rates to the 1978 unsecured roll resulted in a higher tax liability than the application of Proposition 13 tax rates be-

cause the maximum tax rate limitations provided by Article XIII A were in most cases less than the 1977 secured tax rates.

The trial court rendered its oral decision on September 11, 1978, concluding that the Auditor and Tax Collector were legally required to compute, bill and collect property taxes on the unsecured roll for 1978-79 in accordance with tax rate and valuation limitations determined pursuant to Article XIII A, Sections 1 and 2 of the California Constitution (Proposition 13) except for the partial application of Article XIII, Section 12, of the California Constitution for a debt service component on the unsecured roll. The Tax Collector and Auditor proceeded to compute, bill and collect taxes on the unsecured roll in accordance with the judgment pending a final determination of this litigation. Subsequently, on September 22, 1978, the California Supreme Court issued its Opinion in *Amador Valley Joint Union High School District* v. *State Board of Equalization* (1978) 22 Cal.3d 208, generally upholding the constitutionality of Article XIII A. Therein the Court specifically approved the exercise of judicial restraint in dealing prospectively with every provision of Article XIII A indicating that "adjudication of these matters must await an actual controversy, and should proceed on a case by case basis as the need arises." (*Amador, supra,* at 247.) The Court thus recognized that questions such as the unsecured rate would necessarily remain unresolved until addressed in a proper case of statewide application.

In view of the continuing statewide controversy and multiplicity of litigation on this issue, the Auditor then appealed the trial court decision to the State Court of Appeal, Fourth Appellate District, Division One. The Court of Appeal affirmed the judgment of the trial court on January 8, 1980, filed a modification of

its opinion on January 30, 1980, and denied a Petition for Rehearing on January 30, 1980.

On January 24, 1980, the Court of Appeal, Second Appellate District, Division 4, filed its decision in *Roy E. Hanson, Jr. Manufacturing* v. *County of Los Angeles, et al.,* 2 Civil No. 56036, a case in which the same issues were being litigated in a different appellate district. The Court in *Hanson* held that Article XIII, Section 12(a) was of no force and effect in that the controlling constitutional provision for the resolution of this issue was Article XIII, Section 12(b) which the Court construed as requiring absolute equality between secured and unsecured rolls, regardless of change in the secured roll debt levied from year to year. Thus, the Court in *Hanson* differed with the Court in *Board of Supervisors* v. *Lonergan* not only as the rationale for applying the 1% base levy to the unsecured roll, but also as to what debt service component should be added to the base levy to insure the payment of voter approved indebtedness.

Recognizing that the purpose of the San Diego litigation was to define the ministerial duties of county auditors and county tax collectors with regard to their role in computing and billing unsecured taxes, the conflict between the Court of Appeal decision in *Board of Supervisors* v. *Lonergan* and the Court of Appeal decision in *Hanson* v. *County of Los Angeles, et al.,* both of which had been certified for publication, cast considerable doubt on the proper method to undertake those ministerial duties.

The contradicting reasoning of the courts of appeal in *Board of Supervisors* v. *Lonergan,* and *Hanson* v. *County of Los Angeles* created Statewide conflict and lack of uniformity on an issue of importance to all taxing agencies and to all taxpayers and a hearing with the California Supreme Court was sought in

both cases. The Court accepted the cases for hearing and after careful consideration of all issues raised in both suits, rendered its decisions on August 14, 1980. (*Board of Supervisors* v. *Lonergan* [1980] 27 Cal.3d 855; *Hanson* v. *County of Los Angeles* [1980] 27 Cal.3d 870.) The unanimous decisions reversed both courts of appeal and applied a uniform and practical constitutional construction to define the ministerial duties of county officers, giving proper effect to all provisions of the State Constitution in issue. The State Supreme Court recognized that the historical equality of taxation between both rolls must be maintained with the one year lapse of applying secured rates to the subsequent unsecured roll. Thus unsecured taxpayers would receive the benefit of Proposition 13 commencing with tax year 1979-80 and all years thereafter, including the year following any repeal or modification of Proposition 13. Thereafter, in a Petition for Rehearing, the Board of Supervisors raised for the first time the alleged federal issue as to the guarantee clause; Article IV, Section 4 of the United States Constitution.

That Petition was denied without comment on September 17, 1980 by the California Supreme Court.

SUMMARY OF ARGUMENT

1. The alleged federal issue was not timely raised, being first discussed in a Petition for Rehearing in the California Supreme Court.

2. The decision below was based entirely on applicable state law and involved no federal issues.

3. The erroneous allegations of petitioner as to improper determination of facts below do not merit consideration by the United States Supreme Court.

4. The decision of the California Supreme Court and, more significantly, the exercise of its duty to resolve a proper case and controversy as to the interpretation of the State Constitution are fully consistent with a republican form of government.

ARGUMENT

1. THE PURPORTED FEDERAL ISSUE WAS NOT TIMELY RAISED.

While counsel for the Board of Supervisors did address an equal protection issue at time of trial, as noted by the California Supreme Court, that issue was abandoned on appeal. No other federal issues were raised below and the California Supreme Court made its decision fully upon non-federal grounds. Only in a Petition for Rehearing to the California Supreme Court was the "republican form of government" issue raised. That Petition was denied without comment. Generally the attempt to raise a federal question upon a Petition for Rehearing after judgment comes too late unless the Court actually entertains the question and decides it. (*Radio Station WOW* v. *Johnson* [1944] 326 U.S. 120, 128; *Hanson* v. *Denckla* [1958] 357, U.S. 235, 243-4; *Herndon* v. *Georgia* [1934] 295 U.S. 441, 443; *American Surety Co.* v. *Baldwin* [1932] 287 U.S. 156; *Forbes* v. *State Council* [1909] 216 U.S. 396.) In extraordinary circumstances a federal question may be timely raised in a Petition for Rehearing where the litigant is able to show that the decision of the state court was of such surprise that the federal issue could not have reasonably been anticipated from prior decisions. No such surprise existed in the instant case.

The interpretation of Article XIII A in conjunction with the other long standing provisions of the California Constitution

relative to property taxation had been a matter of considerable doubt as evidenced by the fact that there was almost an equal split among California counties as to what method should be utilized to establish a tax rate for the unsecured roll in 1978. Further the Attorney General of the State had vacillated on the issue and the State Supreme Court, in upholding the constitutionality of Proposition 13, had expressly reserved its judgment as to a multitude of interpretative issues which would of necessity have to arise on a case by case basis. The fact that the State Supreme Court granted the Petition for Hearing in this matter would necessarily result in the expectation that the Supreme Court could interpret the constitutional provisions in a manner different from the Court of Appeal. The fact that two Courts of Appeal in the State of California had interpreted the provisions in contrary manners further evidenced the uncertainty of the area of law. In addition prior decisions of the State Courts construed and interpreted the distinctions between unsecured and secured property in a manner consistent with the ultimate decision of the State Supreme Court in this case. (*Rode* v. *Siebe* [1898] 119 Cal. 518; *Abrams* v. *City and County of San Francisco* [1941] 48 Cal.App.2d 1.)

Thus though the unanimous decision of the California Supreme Court may have been a disappointment to the Board of Supervisors, it in no way could be construed to be of such a nature as to be a total surprise and unable to be anticipated. If the Board felt that such a result would do violence to the guarantees of the republican form of government, that objection easily could have been made before the California Supreme Court in the briefs or at oral argument. However, no such objection was made.

2. NO FEDERAL ISSUE NEED BE CONSIDERED

The California Court decision is based entirely upon the construction and interpretation of State constitutional provisions relating to property taxation and is fully adequate to support the judgment without consideration of any federal questions. Under such circumstances your Honorable Court should not grant a petition. (*Murdock* v. *Memphis* [1874] 20 Wall. 590, 636.)

3. THE COURT SHOULD NOT REVIEW THE ALLEGED ISSUES OF FACT

The Board asserts that the decision below is based upon erroneous findings of fact. It is well recognized that your Honorable Court should not assert its jurisdiction merely to review a decision of a State Court upon questions of fact absent extraordinary circumstances. (*Fry Roofing Co.* v. *Wood* [1952] 344 U.S. 157, 160; *United States* v. *Johnston* [1924] 268 U.S. 220, 227; *Grayson* v. *Harris* [1924] 267 U.S. 352, 358; *Portland R. Co.* v. *Railroad Commission* [1912] 229 U.S. 397, 412.) The decision below discusses at considerable length the issues of determination of voter intent raised by the parties and resolves those issues in a manner totally consistent with State law based clearly upon evidence within the record to support it. The determination of those factual issues concomitant with the interpretation of state taxing laws simply does not raise a substantial federal question necessitating review by the Supreme Court. The State Court's decision applies only to one tax year and only to a relatively small portion of the taxable property within the state for that year. It cannot be said to raise such a substantial issue even on a statewide basis much less on a nationwide basis as to justify examination of the factual record below.

4. THE DECISION BELOW IS FULLY CONSISTENT WITH THE GUARANTEE OF A REPUBLICAN FORM OF GOVERNMENT

The heart of the Board's claim goes to the assertion that the California Supreme Court's exercise of its judicial powers has "constituted a judicial usurpation of the taxing power," thus violating the principles of a republican form of government. The exact reverse is true. The decision of the State Court demonstrates unquestionably that California maintains a republican form of government. A republican form of government, as guaranteed by the Constitution of the United States, has been defined as one which derives all its powers directly or indirectly from the people and which is administered by persons holding their offices for a limited period or during good behavior. (*Cochran* v. *Louisiana State Board of Education* [1929] 281 U.S. 370; *Ohio ex rel. Bryant* v. *Akron Metropolitan Park District* [1929] 281 U.S. 74.) Where a state is in full possession of its powers as a member of the union and its legislative, executive and judicial departments are peacefully operating by the orderly and sole methods prescribed by fundamental law, it will be treated as continuing to enjoy a republican form of government notwithstanding that there may be difficulties and disturbances arising from pendency and determination of important litigation and election contests. (*Taylor* v. *Beckham* [1900] 178 U.S. 548.)

The judicial power of the State of California is vested in the Supreme Court and various inferior courts by the State Constitution (Article VI, Section 1). Under the American system of constitutional government among the most important functions entrusted to the judiciary is the interpreting of constitutions. (*Webster* v. *Cooper* [1852] 14 How. 488.) The judicial de-

partment of every government is a rightful expositor of its laws and emphatically of its supreme law. (*Bank of Hamilton* v. *Lessee of Dudley* [1829] 2 Pet. 492.)

After having commenced this litigation to seek a judicial interpretation of the State Constitution and now being dissatisfied with its ultimate result, the Board would attempt to do violence to the basic precepts of the separation of powers; incongruously arguing that the guarantee of a republican form of government prohibits the State Supreme Court from exercising its constitutional mandate to interpret and construe provisions of the California Constitution.

The exercise of its judicial duty to determine the interpretation and interrelationship of constitutional provisions by a state supreme court, vested with that responsibility by the state constitution itself, is mandated by the federal constitutional guarantee of a republican form of government. To so construe Article IV, Section 4 of the United States Constitution so as to bar a state supreme court from resolving such matters would necessarily deny the state of one of the most fundamental precepts of the republican form of government; that of an independent judiciary. Were courts not available to resolve conflicts such as this case below, the result would undoubtedly be anarchy.

While the nature of the controversy through the state court proceedings was clearly a proper justiciable issue as to the ministerial duties of county officers, the Petition to your Honorable Court challenging the duty and authority of the California Supreme Court is clearly a nonjusticiable political question. Whether the constitutional duties of the state courts are to be eliminated or curtailed is for the voters of California to decide. It is recognized that how the sovereign power shall be distributed

by a state among its governmental organs is commonly if not always a question for the state itself. (*Highland Farms Dairy, Inc.* v. *Agnew* [1936] 300 U.S. 608.) Each state has the right to order its own affairs and govern its own people except so far as the Federal Constitution expressly or by fair implication has withdrawn that power. (*Twining* v. *New Jersey* [1908] 211 U.S. 78.)

Under the California Constitution the State Supreme Court was clearly vested with the duty to resolve the issue and it did so in accordance with all applicable state precedents and rules of construction. While the Board's attempt to constrain the State Supreme Court may be viewed as perhaps one of the most unique attempts to relieve the overcrowding of our courts, the clear and unequivocal authority of the State Supreme Court to render a decision in a matter such as this rests not only in the California Constitution but also in the basic premise of the republican form of government itself.

As remarked by Chief Justice Taney in *Luther* v. *Borden* (1849) 7 How. 1, 46: "The high power has been conferred on this court of passing judgment upon the acts of the state sovereignties, and of the legislative and executive branches of the Federal government, and of determining whether they are beyond the limits of power marked out for them respectively by the Constitution of the United States. This tribunal, therefore, should be the last to overstep the boundaries which limit its own jurisdiction. And while it should always be ready to meet any question confided to it by the Constitution, it is equally its duty not to pass beyond its appropriate sphere of action, and to take care not to involve itself in discussions which properly belong to other forums."

Most recently, in a case challenging a decision of the Louisiana Supreme Court as being violative of the Guarantee Clause, the District Court held:

"The validity of a particular transaction under a state statute or constitution is, of course, simply a question of declaring the meaning of state law, and presents no federal question. The plaintiffs have not cited, and we have not found, a single authority for the proposition that an alleged incorrect interpretation of the meaning of state law by a state court presents a federal question. If that were true, the federal courts would have jurisdiction of all cases of statutory construction arising under state law, and there would be no such case that would not present a federal question.

"But plaintiffs further argue that the Louisiana Supreme Court's interpretation of its own Constitution deprives the voters of due process of law, and the guarantee of a republican form of government, under the Federal Constitution, apparently because that court's interpretation of the Louisiana Constitution is different than that of certain voters . . .

". . . Thus, the plaintiffs would have this Court, in the name of the Constitution of the United States, strike down a state court's interpretation of the meaning of its own Constitution, because plaintiffs and 21 deponents state that they disagree with that interpretation. The proposition we must thus decide is who is the authoritative voice in Louisiana in declaring the meaning of the state's law. Obviously, it is the Louisiana Supreme Court. We do not understand the other issues plaintiffs are attempting to raise. To repeat, plaintiffs have neither attacked the procedure by which the amendment was adopted (as unfair or illegal), nor the constitutionality of the amendment itself.

"The problem presented by this case is not a federal constitutional one. It is not for this Court to inquire into the wisdom or feasibility of the domed stadium project. Nor do we inquire into the interpretation of the Louisiana Constitutional Amendment involved since that has been fully passed on by the Louisiana Supreme Court which speaks with final authority on matters of Louisiana state law. In the area in which

we are involved, namely federal constitutional law, we find no support to plaintiffs' contentions, nor have we been cited any argument or authority which would afford relief to plaintiffs." (*Watermeier* v. *Louisiana Stadium and Exposition District,* D.C. La. [1969] 308 F.Supp. 273, affirmed 398 U.S. 955.) For the same reasons, the Petition herein should be denied.

CONCLUSION

Absent the existence and timely raising of a substantial federal issue there is no reason for your Honorable Court to exercise its jurisdiction. Further, the performance by a state supreme court of its proper mandated duties to construe and interpret state tax laws is fully consistent with the republican form of government. Petitioner's allegation of error is fundamentally contrary both to the basic doctrine of separation of powers and a republican form of government. Therefore, the Petition should be denied.

DATED: January 12, 1981

Respectfully submitted,

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